

200410672

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

FILED

2004 JUL 15 P 12:04

CitiMortgage, Inc.

Plaintiff

vs.

Leonard S. Priebe, et al.

Defendants

Case No.: CV-04-534146

Judge Carolyn B. Friedman

GERALD E. FUERST
CLERK OF COURTS
CUYAHOGA COUNTY

ANSWER AND COUNTERCLAIM

Now come Defendants Leonard and Joanne Priebe ("the Priebees"), by and through undersigned counsel Sebraien M. Haygood, and hereby file their Answer and Counterclaim to Plaintiff CitiMortgage Inc.'s ("CitiMortgage") *Complaint in Foreclosure and for Reformation of Mortgage* filed on or about June 21, 2004. For their answer, Defendants Leonard and Joanne Priebe state the following:

COUNT ONE

1. The Priebees deny for want of knowledge sufficient to form a belief the allegations in Paragraph 1 of the Complaint.

COUNT TWO

2. The Priebees deny for want of knowledge sufficient to form a belief the allegations contained in Paragraph 2 of the Complaint.

3. The Priebees deny for want of knowledge sufficient to form a belief the allegations contained in Paragraph 3 of the Complaint.

4. The Priebees deny for want of knowledge sufficient to form a belief the allegations contained in Paragraph 4 of the Complaint.



5. The Priebs deny for want of knowledge sufficient to form a belief the allegations contained in Paragraph 5 of the Complaint.

6. The Priebs deny for want of knowledge sufficient to form a belief the allegations contained in Paragraph 6 of the Complaint.

COUNT THREE

7. The Priebs are without knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 7 of the Complaint.

8. The Priebs are without knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 8 of the Complaint.

9. Further, the Priebs deny each and every, all and singular, the statements and allegations contained in all counts in CitiMortgage's Complaint, which are not specifically herein admitted to be true.

FIRST AFFIRMATIVE DEFENSE

DWK 10. The Priebs have paid their mortgage debt in full and satisfied the terms of the mortgage and CitiMortgage was compensated for whatever payments lawfully due to it.

SECOND AFFIRMATIVE DEFENSE

DWK 11. CitiMortgage failed to attach necessary documents to its complaint.

THIRD AFFIRMATIVE DEFENSE

D 12. The Priebs affirmatively allege that CitiMortgage's Complaint fails to allege facts sufficient to constitute a cause of action against it upon which relief may be granted.

FOURTH AFFIRMATIVE DEFENSE

DWK

13. CitiMortgage failed to provide a complete written payment history to the Priebes, despite numerous oral and written requests for such.

FIFTH AFFIRMATIVE DEFENSE

DWK

14. Any damages which CitiMortgage claims it sustained were brought about by the failure of CitiMortgage to prevent, mitigate, reduce and/or minimize said damages.

SIXTH AFFIRMATIVE DEFENSE

D

15. CitiMortgage's claims are barred by reason of its intentional or innocent misrepresentations.

SEVENTH AFFIRMATIVE DEFENSE

D

16. CitiMortgage's claims are barred by the Statute of Frauds.

EIGHTH AFFIRMATIVE DEFENSE

D

17. The Priebes affirmatively allege that the complaint is filed in violation of Civ.R. 11.

NINTH AFFIRMATIVE DEFENSE

D

18. The Priebes affirmatively allege that CitiMortgage has filed a frivolous lawsuit against them in violation of R.C. 2323.51.

TENTH AFFIRMATIVE DEFENSE

19. The Priebes will rely on any and all further defenses which become available or appear during Discovery proceedings in this Action, and hereby reserve the right to amend this Answer for the purpose of asserting any such affirmative defenses.

ELEVENTH AFFIRMATIVE DEFENSE

20. The Priebses have not knowingly or voluntarily waived any defense they may have in this action and the Priebses reserve the right to amend their Answer and raise additional defenses as they become known.

COUNTERCLAIM

BACKGROUND

DWK 1. The parties entered into a mortgage agreement, dated and filed on or about October 25, 1974. As part of the agreement, the Priebses' initial payment, due on November 1, 1974, was remitted from the escrow account.

DWK 2. The Priebses continued to make regular monthly mortgage payments to the holder of their mortgage note.

DWK 3. The Priebses' records indicate that said mortgage loan was paid in full on July 1, 2003.

DWK 4. CitiMortgage began contacting the Priebses on or about September 3, 2003, claiming the Priebses still owed a balance on the account.

DWK 5. Defendant Leonard Priebe repeatedly requested a complete payment history and a copy of the original Note and Mortgage in an effort to resolve the dispute.

DWK 6. CitiMortgage never provided the information.

DWK 7. Although believing their mortgage obligation to CitiMortgage was fully satisfied, the Priebses made three additional payments, under protest, in an effort to resolve the dispute.

8. The Priebe continued to contact CitiMortgage regarding the dispute and the requested information right up until the time CitiMortgage filed the within foreclosure action.

9. Since the filing of the Foreclosure Complaint, the Priebe have been contacted by several persons in regard to the filing of the Complaint.

10. The filing of the Complaint for Foreclosure has adversely affected the Priebe's credit rating and ability to obtain further credit.

11. The filing of the Complaint in Foreclosure has clouded the Priebe's title to their property.

COUNT ONE

12. The Priebe reallege the allegations contained in paragraphs 1 through 11 as though fully rewritten set forth herein.

13. CitiMortgage falsely claim that the Priebe have not paid their mortgage in full.

14. CitiMortgage maliciously filed a Complaint in Foreclosure, after either not attempting to determine if the mortgage was paid in full or with knowledge that the loan was fully paid.

15. CitiMortgage's act of filing the Complaint damaged the Priebe by placing their home in foreclosure proceedings, by noticing their creditors that their home was in foreclosure, by public notice of the suit, by incurring legal costs, and by lowering their credit rating.

16. The Priebe pray for damages to be proved at trial, for punitive damages, for attorney fees, and for whatever other relief the court deems just and appropriate.

COUNT TWO

17. The Priebses reallege paragraphs 1 to 16 as though fully rewritten set forth herein.

18. According to the Priebses' records, the said debt is paid and they have satisfied the terms of the mortgage.

19. The Priebses pray that the Court determine that the debt is fully satisfied, that they receive a title to their property unencumbered by CitiMortgage's lien, and for whatever damages the Court determines to be fair and just.

COUNT THREE

20. The Priebses reallege paragraphs 1 through 19 as though fully rewritten set forth herein.

21. CitiMortgage had a duty to administer the terms of the Mortgage and Note in a fair manner, determine the accurate amount owed by the Priebses on said Note, and to provide the Priebses with a payment history and copies of the Mortgage and Note upon request.

22. CitiMortgage breached that duty by failing to accurately determine the amount owed on the note and by not providing the Priebses with a payment history and copies of the Mortgage and Note.

23. The Priebses have been damaged by the actions of CitiMortgage by making additional mortgage payments beyond what was owed, by the time, expense, and effort they incurred in attempting to resolve the dispute with CitiMortgage, and by the filing of the Complaint in Foreclosure.

24. The Priebs pray that they be awarded their damages as determined at trial and that they be granted whatever other relief as this Court may deem just and appropriate.

COUNT FOUR

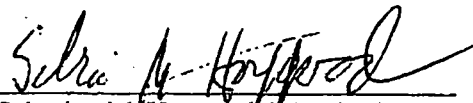
25. The Priebs reallege paragraphs 1 through 24 as though fully rewritten set forth herein.

26. CitiMortgage violated the Real Estate Settlement Procedures Act, 12 USCS Section 2605, by not responding to the Priebs' inquiries regarding the payment history of the account.

27. The Priebs pray that they be awarded such damages as are permitted under the statute and for whatever other relief as this Court may deem just and appropriate.

WHEREFORE, the Priebs pray that this Honorable Court awards them actual damages to be proved at trial, statutory damages, punitive damages, attorney fees and their costs of this litigation, and grant the Priebs such other relief as this Court may deem just and appropriate.

Respectfully submitted,


Sebraien M. Haygood (0043905)
Haygood and Associates
1510 Hanna Bldg.
1422 Euclid Avenue
Cleveland, OH 44115
(216) 687-1902 fax (216) 687-1906
email: sebraienh@haygoodlaw.com
Attorney for Leonard and Joanne Priebe

CERTIFICATE OF SERVICE

A copy of the foregoing Answer and Counterclaim has been sent by regular

United States Mail, this 15th day of July, 2004, to the following:

Leonard and Joanne Priebe
330 Calvin Drive
Seven Hills, OH 44131

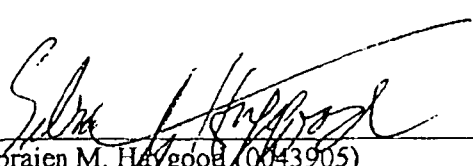
United States of America
Attorney General
U.S. Department of Justice
Constitution & 10th Street, NW
Room 5111
Washington, DC 20530

Dollar Bank, Federal Savings Bank
1301 East Ninth St.
Cleveland, OH 44114

Steven L. Sacks, Esq.
Lerner, Sampson & Rothfuss
P.O. Box 5480
Cincinnati, OH 45201-5480

United States of America
c/o U.S. Attorney
Northern District of Ohio
United States Courthouse
801 W. Superior Ave., Ste. 400
Cleveland, OH 44113-9898

Huntington National Bank
41 South High St.
Columbus, OH 43287


Sebraien M. Haygood (0043905)
Attorney for Leonard and Joanne Priebe